

immunoassay method called antigen-antibody competitive binding to test a urine sample for drug use.

48. A method of using a device as claimed in claim 47 to test for drug use, comprising the steps of dropping a urine sample into the well and then covering and sealing the well/opening with the cap/cover means in a fluid tight relationship.

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REMARKS

The action mailed 04/02/02 has been received and its contents carefully noted.

Filing Receipt

The corrected filing receipt requested in the amendment filed 10/15/00 has not been received.

Disclosure Document

Responsive to the bottom paragraph on page 4 of the action, a copy of the separate letter entitled DISCLOSURE DOCUMENT PRESERVATION REQUEST, filed 5/7/99, is attached, together with a copy of the postcard receipt.

Drawings

Attached is a LETTER TO OFFICIAL DRAFTSPERSON effecting the drawing changes approved in the action mailed 02/22/02.

Claim Rejections - 35 USC § 103

Reconsideration of the rejection of claims 1,8,23-34 and 37-45 under 103(a) as being unpatentable over Dafforn in view of Senior is requested. As to claims 1,8,23-34 and 37-44, applicant's

arguments in the AMENDMENT filed 10/15/01 are incorporated here by reference. Concerning claim 45, one of ordinary skill in the art would not have viewed Senior as applicable for modifying Dafforn.

Thus, in Senior, one sees a soaked bibulous tongue 16 sticking outwards, and a cap 16 goes over that tongue. In Dafforn, bibulous member 214 is internal and sample is supplied to bibulous member 214 through two small holes in the bottoms of wells 220,2. To come to the invention defined in claim 45, one has to conceive of the idea of sliding a cap, for the most part, onto a housing end, not over a protruding, wet tongue. Only coincidentally might that cap seal wells 220,2. The situation is sufficiently different that such a modification of Dafforn would have been beyond ordinary skill in the art.

Additionally in support of the non-obviousness of the invention defined in claim 45, it is noted that a markedly different type of sealing is achieved in the present invention and in the modification proposed by the examiner, as compared to the sealing in Senior. In Senior, urine is free to move beyond the seal into the cap, whereas, in the present invention, a wall of the cap, in sealing, contacts the top of the well/opening, so that urine is not free to move beyond the seal into the cap.

When one considers that in both Dafforn and the present invention, the top parts of the wells are even vacant, modification on the basis of Senior's disclosure of protecting a protruding wet

tongue becomes even more remote for one of ordinary skill. Claim 46 is added above to state the existence of this situation of a vacant upper part of the well in combination with claim 45.

Claim 47 has been added above, depending from claim 46, to specify applicant's preferred test strip lacking in both Dafforn and Senior. Added claim 48 specifies the important measured adding of test sample - see paragraph 8. of applicant's DECLARATION UNDER 37 CFR 1.132 filed 08/25/00.

Reconsideration of the rejection of claims 1,8 and 23-45 on WO or Chipkowski alone or in view of Senior under 103(a) is requested.

The rejection without Senior is based on reading the container of WO or Chipkowski on the cap/cover means of claims 1,8 and 23-45. If that's the case, then what is the cartridge/cassette means of these claims? The most likely candidate might be the test cards of WO and Chipkowski, with their openings 51. But the tops of the openings 51 are not sealed by the container in WO or Chipkowski, as required in the present claims 1,8 and 23-45. Nor, particularly with respect to the present claims 45-48, does the container have a wall which, in sealing, faces the test card face bearing openings 51 and contacts the tops of those openings.

As to the rejection on WO or Chipkowski with Senior, the only time that WO or Chipkowski gets sealed is when the test card, and, therefore, test strips, are removed and the solid cap applied. See WO, page 5, lines 5-18. Similar disclosure is in Chipkowski, col.

4, lines 60-65. To apply Senior, one of ordinary skill in the art would have to conceive of applying some kind of cap while the test card is still in place, this being itself beyond ordinary skill, but, there would also have been no motivation, at least for the reason of the teachings in the primary references not to allow urine beyond the max. lines on the test cards, so that WO and Chipkowski do not concern a device that is to be laid on its side, as in Senior.

Reconsideration of the 103(a) rejections on WO or Chipkowski alone or with Senior is also requested for the reason that applicant does not agree that the missing features of the claims are notoriously well known in the art in the circumstances claimed here. For instance, Owens and Ullman are no longer applied. The examiner is invited to apply suitable secondary references, if such can be found. Besides the features mentioned as missing in the action of 04/02/02, among other features also missing in WO, Chipkowski, and Senior is the dropping of claims 39,40,44 and 48; see paragraph 8. of applicant's DECLARATION UNDER 37 CFR 1.132 filed 08/25/00 concerning the importance of this measure. In all of WO, Chipkowski and Senior, the sample collection location is flooded with urine.

On the basis of the above amendments and remarks, reconsideration of the rejections and allowance of claims 1,8, and 23-48 are requested.

Respectfully submitted,

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